

# **IDAHO POWER COMPANY**

**EXHIBIT NO. 1**

**MAGGIE BRILZ**

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION OF )**  
**IDAHO POWER COMPANY FOR AUTHORITY )** **CASE NO. IPC-E-01-3**  
**TO ACQUIRE REDUCTIONS IN ELECTRICAL )**  
**DEMAND AND ASSOCIATED CONSUMPTION )**  
**OF ELECTRICAL ENERGY FROM )** **ORDER NO. 28699**  
**IRRIGATION CUSTOMERS. )**  
**)**

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On February 7, 2001, Idaho Power Company filed an Application seeking permission from the Idaho Public Utilities Commission (“Commission”) to initiate a program (“Irrigation Buy-Back Program” or “Program”) to purchase energy load reductions from its irrigation customers during the 2001 growing season.<sup>1</sup>

After notice and hearing, the Commission issued Order No. 28647 on February 20, 2001 allowing Idaho Power to solicit competitive bids from irrigation customers desiring to participate in the Program. The Commission also established a written comment deadline for interested parties and persons.

On March 13, 2001, the Commission held a public hearing on the Company’s Application. After consideration and review of the record the Commission issued Interlocutory Order No. 28676 on March 14, 2001, approving Idaho Power’s request to accept bids from its irrigation customers to implement its Irrigation Buy-Back Program. The Commission issued the Interlocutory Order to expedite implementation of the Program and specified that a final order detailing the Commission’s findings would follow. Prior to issuance of a final Order several petitions were filed by Idaho Power irrigation customers. Four irrigation customers filed petitions requesting that the Commission issue an order that would require Idaho Power to allow them to participate in the Program. Two other irrigation customers filed petitions seeking clarification of the Commission Interlocutory Order No. 28676. In addition, the Idaho Irrigation Pumpers Association (“IIPA”) has filed an Application for intervenor funding.

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<sup>1</sup> Idaho Power defines the “2001 growing season” as March 1, 2001 through November 30, 2001. RFP at p.1, § 1.3.

This Order constitutes the Commission's final Order regarding Idaho Power's Application, the above mentioned customer petitions and IIPA's request for intervenor funding.

## **BACKGROUND**

### ***A. Idaho Power Company's Irrigation Buy-Back Program***

Idaho Power states that current volatility in the regional power market and projected below normal streamflows have pushed the market price of power to unprecedented levels. The Company contends that the Irrigation Buy-Back Program may allow it to cost-effectively reduce its total purchase power expense during 2001, thereby benefiting all of its customers. In addition, Idaho Power believes that the Program may help to reduce the amount of off-system purchases of power that it may have to make this summer to serve its system load.

To obtain reductions in purchase power expenses for this year Idaho Power will encourage irrigation customers to reduce their energy consumption during this growing season in exchange for compensation from the Company. Application at 2; Brilz, Tr. at p. 13.<sup>2</sup> After receiving Commission approval, *see* Order No. 28647, Idaho Power began soliciting bids from certain irrigation customers by sending them a Request for Proposals ("RFP"). Brilz, Tr. at p. 14. The RFP was sent to roughly 1,700 irrigation customers taking service under Tariff Schedule 24, who according to Company records, had historically consumed enough energy to be able to offer at least a 100,000 kWh reduction for the 2001 growing season. Application at 3; Brilz at p. 13. The RFP also explained the specific requirements and commitments which the Company required the bidding irrigation customer to meet in order to participate in the Program. *See generally* RFP. The Company also required that bidders specify the number of acres that would be removed from production as a result of participation in the Program. Enclosed with the RFP sent to irrigation customers was the official form ("Offer Form") necessary for submitting a bid to Idaho Power. *See* Cover Letter to RFP. This Offer Form also provided the irrigation customer's historic energy consumption. Attachment A to RFP. The Company also stated that it would allow any irrigation customer who takes irrigation service under Rate Schedule 7 or 9 to transfer to Schedule 24 in order to participate in this Program. Gale, Tr. at p. 151.<sup>3</sup>

Irrigation customers were allowed to submit two bids to Idaho Power prior to 5:00 p.m.

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<sup>2</sup> Maggie Brilz is employed as the Director of Pricing in Idaho Power Company's Pricing Records Services Department.

<sup>3</sup> At the time of the March 13, 2001 hearing, Ric Gale was employed as the General Manager of Pricing and Regulatory

Wednesday, February 28, 2001. Brilz, Tr. at p. 14. Customers with bids accepted by Idaho Power were obligated to provide additional information to the Company so it could verify that the reductions offered would not be offset by an increase in consumption at other meter service points or locations. RFP at p. 5, § 3.3.

To promote this Program and answer the questions of potential participants, Idaho Power held workshops in the following communities on February 22 and 23, 2001: Aberdeen, American Falls, Blackfoot, Glenns Ferry, Grand View, Heyburn, Jerome, Mountain Home, Nampa, Payette, Shoshone and Twin Falls.

***B. The RFP Bids***

The Commission ordered that after the Company had evaluated all the bids it received from irrigation customers, but prior to signing contracts, it must receive further authorization from the Commission to continue with its Program. Order No. 28647. This Order also required that the Company submit the following information to the Commission: the amount of kilowatt hours (“kWh”) proposed to be purchased, the associated number of acres to be taken out of production by county, the average price per kWh that the Company would pay irrigators, the maximum bid price the Company proposes to accept, the monthly energy prices in the forward market for the 2001 irrigation season and a confidential report showing the projected loads and resources by month during the irrigation season with and without the Program. The Commission required Idaho Power to file this information with the Commission on or before March 9, 2001.

In response to Order No. 28647, Idaho Power stated it received 900 bids for energy reductions from approximately 500 irrigation customers taking service under Schedule 24. Brilz, Tr. at p. 14; Request at 1. Idaho Power analyzed the energy reductions that had been offered through these bids and compared them to other options the Company has both in demand and supply side programs. Brilz, Tr. at p. 14. Through this analysis the Company decided to accept 364 bids for 15¢ per kWh or less with an estimated average price of 14.2¢ per kWh. *Id.*; Gale, Tr. at pp. 155-56; Exhibit 001; Request at 2. Idaho Power asserted that after adding the amount of reduced revenue impact the actual cost of the Program rises to 19.4 ¢ per kWh. Exhibit 001. The load reduction associated with the 364 bids represented approximately 409,973,664 kWh or 205 average megawatts (“MW”) over a 2000-hour irrigation season. Brilz, Tr. at p. 22; Exhibit 002. The Company also

calculated that 136,300 acres would be taken out of production as indicated by the accepted bids.<sup>4</sup> Brilz, Tr. at p. 22; Exhibit 002.

Idaho Power estimated the savings per kWh it would procure through its Program by comparing the price it would pay irrigation customers to the average Flat Mid-Columbia Forward Market Price of \$305 per MW as of March 2, 2001. Brilz, Tr. at pp. 16-17; Exhibit 001. The Company chose the average Flat Mid-Columbia price to measure this impact because it had no assurance from irrigation customers when load reductions would occur. Through this comparison the Company estimated a savings of 11.1¢ per kWh by purchasing load reductions from irrigation customers. *Id.*

The Company states that energy reductions by participating irrigation customers will be determined by taking the difference between their average kWh consumption at each metered service point during the immediately preceding five years (“Base Energy Consumption Amount”) and the amount of electric energy consumption during the 2001 irrigation season. RFP at pp. 5-6, § 3.4. This will be compared to the bidder’s offered energy reduction. The Company states that the bidder’s offered energy reduction will be converted into calendar month equivalents based on the proportionate share of each calendar month’s contribution to the total Base Energy Consumption Amount. RFP at p.6, § 3.6.

Payment amounts for participating customers will be the difference between the Base Energy Consumption Amount and the actual reduction during the 2001 irrigation season. *Id.* at p. 9, § 4.2. For each month the bidder actually reduces energy consumption from the monthly Base Energy Consumption Amount by at least 95% of the offered energy reduction for the equivalent calendar month, the Company will multiply the reduction by the accepted bid price and pay the irrigation customer 75% of that amount for that month. *Id.* The remaining 25% balance will be retained by Idaho Power and paid to the irrigation customer prior to November 30, 2001 after the Company has confirmed that the full offered energy reduction has been delivered and the bidder has otherwise fully performed its agreement with Idaho Power. *Id.* The Company will deduct from payments to irrigation customers any balance they are in arrears or owe for penalties that are owed at the end of the season for falling more than 5% short of the kWh savings they bid for the entire

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<sup>4</sup> Attachment II to Idaho Power’s request breaks down the 136,300 acres between counties and shows the percentage of the total number of acres per county that would be taken out of production with the proposed 364 accepted bids.

irrigation season. *Id.* at pp. 9-10, §§ 4.2-4.3. The Company will also pay for energy reductions up to 105% of the offered energy reduction. *Id.* at p. 10, § 4.4. If the customer fails to provide 95% of the offered energy reduction for the monthly proportion of the total offered energy reduction they will not be paid for that month and the Company proposes to carry any balance owed to a customer for any energy savings that occurred, but did not reach the 95% mark, until the end of the Program.<sup>5</sup>

Idaho Power asserted with the Program it will expend substantial sums in payments to participating irrigation customers and experience lost revenues as a result of large load reductions in the irrigation class. Idaho Power contended that recovery of lost revenues is critical to the Company's willingness to proceed with this Program because that constitutes a real cost that will be experienced as a result of this Program. Brilz, Tr. at p. 20; Gale, Tr. at p. 145. Consequently, Idaho Power requested that the Commission authorize it to treat these costs and lost revenues as purchase power expenses that would flow through the Company's Power Cost Adjustment ("PCA") mechanism. Brilz, Tr. at pp. 15-16.

### ***Comments and Testimony***

The Commission held a public hearing on March 13, 2001, to consider the written comments and to receive testimony from the parties and members of the public. The Commission granted intervention to the Idaho Industrial Customers of Idaho Power, the Idaho Irrigation Pumpers Association, Inc. and Astaris LLC.

#### **1. Commission Staff**

The Commission Staff made the following recommendations through its comments filed on March 12, 2001 and the testimony of Randy Lobb, Administrator of the Utilities Division at the Commission at the March 13, 2001 public hearing. First and foremost Staff recommended that the Commission authorize Idaho Power to proceed with its Program. Lobb, Tr. at pp. 40-41.

##### **a. Purchase Price**

Staff found the 15¢ per kWh price proposed by Idaho Power was reasonable, when compared to the forward market prices and the options the Company has available to obtain supply or reduce load.<sup>6</sup> Lobb, Tr. at p. 41. However, absent more specific information regarding the

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<sup>5</sup> The customer will be paid the amount under the 95% mark for any short month they have when the Company combines it with the other monthly energy savings to calculate the total amount saved for the season, final payments and penalties.

<sup>6</sup> These options include commercial and industrial buy-back programs, *see* Case No. IPC-E-01-4, Irrigation Time-of-Use Pilot Program; Case No. IPC-E-01-6, diesel generators, natural gas turbines and market purchases.

characteristics and mix of resource options planned and implemented by the Company, Staff stated it was unable to determine what would be the most appropriate price to pay irrigators for energy purchased through this Program. Lobb, Tr. at p. 41.

**b. Program costs and lost revenues**

Staff stated that the money paid to irrigators, net of the penalties paid to the Company under the Program should be passed through its PCA mechanism like any other power supply cost. Staff Comments at 4. Likewise, Staff commented that known and measurable Program costs should also be shared based on a 90% pass through to ratepayers with the Company's shareholders absorbing the remaining 10%. *Id.*

Staff believed that recovery of at least a portion of lost revenues was justified in this case despite Commission rulings in the past to the contrary. Lobb, Tr. at pp. 42-43. Staff asserted that this case is different than traditional demand side management ("DSM") programs because the energy savings associated with this Program are more easily quantified as each irrigator has bid to forego consuming a certain amount of energy at a set price for a single year. *Id.* This is a significant difference from multi-year, engineering estimate type calculations of savings occurring in traditional DSM programs. *Id.* Staff also pointed out that because the energy reduction occurs during a single year it would not be subject to test year true up in a general rate case as would long term reductions associated with traditional DSM programs. *Id.* However, Staff opined that the Company should not profit unduly from this Program. Lobb, Tr. at p. 43. Rather, Staff recommended that Idaho Power be allowed to recover at least the portion of lost revenue that will make the Company no worse off with the Program than without it. *Id.* Thus, the outcome should be revenue neutral. *Id.* Staff recognized that Idaho Power might not agree with this proposal but pointed out that the Company has the responsibility as a public utility to keep charges made for the services it provides "just and reasonable." *Idaho Code* § 61-301. Staff asserted that this responsibility in combination with the current market situation make it clear that the Company should emphasize the development and implementation of programs that reduce power supply costs because failure to do so could be deemed imprudent.

Staff also commented that there is uncertainty in measuring energy reduction due solely to this Program because it is quite possible that some irrigators would not have farmed at all or would have switched to a crop that required less water even if this Program had not been offered or that energy use may also be reduced if the pumping season is shortened due to lack of water.

Therefore, Staff suggested that lost revenues should be reduced to account for these factors. *Id.*

The issue of lost revenues is further complicated by the Company's presumption that there is an entitlement to projected sales that might have occurred without the Program. The projected volume of sales most certainly includes some sales due to growth. To the extent that growth in any customer class can be offset with this or any other energy buy-back programs that are more cost effective than market purchases, the Company's liability is reduced. Staff argued that to the extent energy associated with growth is offset by this Program, the Company should not be entitled to recovery of the associated revenues through a lost revenue adjustment.

Staff recommended that there should be no disincentives for the Company to secure the least cost power supply options. At the same time, Idaho Power should not be enriched for doing what would be expected to minimize negative economic impacts on its customers. The amount of lost revenue that would give the Company "zero" benefit should be calculated at the conclusion of the Program this fall. This reduced amount should then be filed with the Commission for review prior to passing it through the PCA. Staff also supported the review of these costs as part of the PCA. Staff also recommended that Idaho Power record the purchase cost paid to irrigators and any calculated lost revenue in separate purchased power subaccounts with detail that easily identifies for audit the costs for the buy-back program and any lost revenue amounts. Finally, Staff recommended that the PCA filing should also include a separate line to identify these costs.

#### **c. Secondary Economic Effects**

In relation to the 136,300 acres that Idaho Power originally stated would be taken out of production this season, Staff believed that the number was within the realm of reasonableness. Lobb, Tr. p. 44. Staff calculated that Program participants in Elmore County, the county with the highest percentage of participation, will receive \$12.2 million in payments from Idaho Power, or \$457 an acre, to reduce their energy consumption. *Id.* Under the revised information provided by the Company, Staff estimated that Idaho Power will make \$17.5 million in payments to irrigation customers in Elmore County or approximately \$459 an acre. Staff asserted either calculation shows a significant amount. *Id.* Elmore County is the only county where more than 10% of the irrigated acreage would be removed from production. *Id.* Accordingly, Staff recommended that all kWh, regardless of county, that are bid into the Program and that are at or below the accepted bid price be accepted. *Id.*

#### **d. Interest on Holdback Amounts**



Finally, Staff recommended the Company pay interest on the hold back funds in the amount of 6% APR, consistent with the interest rate paid on customer deposits. Lobb, Tr. at p. 44. Staff also recommended that interest should be paid in November when the Program is closed out.

## **2. Idaho Irrigation Pumpers Association**

IIPA testified that Idaho Power's Program will provide a cost effective means to encourage irrigation customers to reduce their energy consumption. Yankel at pp. 2-3.<sup>7</sup> IIPA also stated that this Program will provide a benefit to irrigation customers and all customers of Idaho Power by reducing its total purchase power expense. *Id.* IIPA also asserted that Idaho Power's purchases of power reductions from irrigation customers will keep dollars in the pockets of Idaho farmers, rather than in pockets of out-of-state power generators and marketers, thus benefiting the state economy. *Id.* at pp. 3-4. IIPA stated that Idaho Power should be allowed to recover payments and appropriate program costs through the PCA mechanism. *Id.* at p. 4. However, IIPA asserted that the price paid to participating irrigation customers should be raised above 15¢ per kWh to 20¢ per kWh so that the total amount of kWh saved would be increased. *Id.* at pp. 4, 21-22. IIPA disagreed with Idaho Power's choice of the flat Mid-Columbia rate to measure Program savings. *Id.* at pp. 11-12. Rather, IIPA asserted that to measure savings the forward market prices for use during heavy and light load hours should be utilized. *Id.* at p. 12. Furthermore, IIPA alleged that when evaluating the impact of the Irrigation Buy-Back Program the historical loss factor must be taken into account. *Id.* at p. 14. IIPA suggested that the average loss factor for the irrigation class is 11.79%.

## **3. Industrial Customers of Idaho Power ("ICIP")**

ICIP stated that Idaho Power's Program is a reasonable short-term response to mitigate extremely high forward power supply costs. ICIP Comments at 2. Despite, its general agreement with the intent of this Program, ICIP requested that the Commission take additional time to review the record prior to rendering a decision. Tr. at p. 169. ICIP also wanted to know the types of crops that would be idled as a result of this Program. *Id.* at p. 170. ICIP also requested that the "confidential report" showing the projected loads and resources by month during the irrigation season with and without the program be provided to all Idaho Power customers. *Id.* at p. 169. ICIP also agreed that costs associated with this Program should be subject to a prudence review prior to

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<sup>7</sup> IIPA prefiled the testimony of Anthony Yankel, a registered professional engineer in Ohio and Idaho.

Idaho Power's 2002 PCA filing, but objected to its request for full recovery of lost revenues. *Id.* at p. 170.

#### **4. Astaris LLC**

In general Astaris supported Idaho Power's Program. Peseau, Tr. at p. 10.<sup>8</sup> Astaris also agreed that Idaho Power's existing PCA mechanism is an acceptable tool for the recovery of the actual costs incurred by Idaho Power under this Program. Astaris Comments at 1. However, Astaris stated its support of this Program is subject to the following conditions:

1. Idaho Power should be required to prove that it has prudently managed its energy supply situation during the recent meltdown in the western United States electricity market. Ratepayers should not be asked to pay for errors in judgements or attempts to maximize either regulated or unregulated profits at the expense of system resources. This should take place when costs recovery takes place.
2. There is a probability that the buyback or curtailment of power at times will be oversubscribed, thus producing excess system capacity. Ratepayers should be credited for all profits from such sales that are made by both regulated and unregulated entities of Idaho Power.
3. Idaho Power's request to recover lost revenues in addition to purchase costs is inequitable to its ratepayers and should not be allowed.
4. Approval of the buyback program should not bypass the normal PCA modeling and deferral process.
5. Finally the Company requests that the Commission combine this case with IPC-E-01-7.

Astaris Comments.

#### **5. Public Testimony**

Several irrigators testified in support of the Program. Tr. at pp. 59, 108, 116, 140.<sup>9</sup> They asserted the Program will benefit local economies because payments by Idaho Power to participating irrigation customers will be spent in the state of Idaho. Tr. at pp. 111, 142. One irrigator also supported allowing other irrigators who bid too high, into the Program at 15¢ per kWh. Tr. at p. 142. Another irrigator from Elmore County stated that irrigators would be worse off without the

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<sup>8</sup> Mr. Peseau, President of Utility Resources Inc., located in Salem, Oregon testified on behalf of Astaris at the March 13, 2001 hearing.

<sup>9</sup> Armand Eckert, Blaine Hulet, Sid Wing and Earl Calsen.

Program and that because a portion of Elmore County has been declared a critical ground water area it offers a once in a lifetime opportunity to take as much land out of production as possible to help to recharge the aquifer in that area. Tr. at p. 117.

The Idaho Irrigation Equipment Dealers Association testified that it had no opinion on the Program but raised concerns about reduced sales and its member's financial well being in the short-term. Tr. at pp. 134-35.

Some irrigators did raise suggestions and concerns regarding the proposed Program. Mr. Eckert made the following suggestions: eliminate the 200% penalty, require the Company to pay participants for any energy savings over 105% of their offered energy reduction, allow Idaho Power or participating irrigation customers the option to defer Program payments until 2002 and allow irrigators on Schedules 7 or 9 the opportunity to participate in the Program. Tr. at pp. 60-62.

Craig Castagneto testified that Idaho Power did not evaluate bids in the manner as stated under section 5.1 of its RFP. Tr. at pp. 123-24. Specifically, that it would evaluate the offers and select those that provided the most value to Idaho Power and its customers. *Id.* Accordingly, Castagneto asserted that the Company should take into account the value of non-pumped water that would result from load reductions. *Id.* If it does not the Commission should at least require the Company to allow those who bid under 15¢ per kWh to be raised to that price and those whose bids were rejected because they bid above this level should be allowed the opportunity to join the Program at 15¢ per kWh. Tr. at p. 124.

## **6. Written Comments**

The Commission received numerous written comments regarding this Program. It has reviewed and considered each one in the decision-making process of this case. *See* Record in Case No. IPC-E-01-3.

## **COMMISSION FINDINGS**

The Commission will first address several preliminary issues raised by Astaris and ICIP. ICIP requested more time to review the record and requested that the Commission delay its decision in this matter. ICIP, Tr. at p. 169. We find that issuance of Interlocutory Order No. 28686 approving this Program renders this request moot. ICIP also requested that the confidential report Idaho Power filed with the Commission be released to the public. Idaho Power objected to disclosure of this report. Tr. at pp. 183-184. A compromise was reached when ICIP agreed to be subject to a protective agreement so that the information would not be disclosed. Tr. at p. 190.

Accordingly, the Commission finds this request moot. Lastly, ICIP requested information on the type of crops that would not be grown during this irrigation season. The Commission finds this information unnecessary for it to render a decision in this case as the primary focus of the Program is to conserve energy. Thus, this request is denied.

Astaris requested that the Commission combine the following cases, filed by Idaho Power, and schedule a single hearing because they raise similar issues: Case Nos. IPC-E-01-3, IPC-E-01-4 and IPC-E-01-7. Astaris Comments at 5. Again, the Interlocutory Order issued by the Commission has rendered this request moot. We now turn to the merits of the Buy-Back Program.

After reviewing the record in this case, the Commission finds that Idaho Power's Irrigation Buy-Back Program will serve the public interest by providing the opportunity for the Company's customers to receive positive benefits if it is successful. Allowing Idaho Power to pay irrigators for energy reductions rather than purchasing power on the wholesale market will have a positive impact on Idaho's economy in general by retaining those dollars in the state of Idaho. In particular the Commission finds the testimony of Sid Wing, an Idaho Power irrigation customer from Elmore County, particularly compelling. In response to Commission questioning regarding the significant amount of acreage which would be idled in Elmore County as a result of the Program, Mr. Wing stated that farmers there would be better off with the Program than without it. Tr. at pp. 116-118. Accordingly, the Commission approves Idaho Power's Irrigation Buy-Back Program as a temporary voluntary program that will end at the conclusion of 2001.

The Commission further finds that the bidding process used in this case has acted as an effective mechanism to discern the price at which kWh should be purchased from irrigation customers. Reaffirming our Interlocutory Order the Commission continues to find that 15¢ per kWh is reasonable based on the market conditions that exist today and are likely to exist during the period of time this Program will be in effect. By this decision the Commission rejects raising the price to 20¢ per kWh as requested by IIPA. The Commission subsequently ordered the Company to allow customers with bids higher than 15¢ per kWh to participate in the Program if they were willing to accept 15¢ per kWh. In addition, successful bids below 15¢ per kWh were allowed to receive 15¢ per kWh. *See* Interlocutory Order. Because of these Program changes, new information was filed by Idaho Power with the Commission on March 23, 2001 that estimates that 154,439 acres will be taken out of production and 499,505,706 kWh will be saved during the 2001 irrigation season. *See*,

Attachment to Letter. The Commission also notes that those irrigators that testified at the hearing on March 13, 2001 did not oppose this pricing structure. *See*, Tr. at pp. 31-32, 120-121, 123, 124.

The Commission further finds that the direct costs and lost revenue impacts of this Program may be treated as a purchased power expense in the Company's Power Cost Adjustment ("PCA") mechanism. Idaho Power and the parties shall develop and present a proposal to the Commission recommending a procedure to calculate the amount of revenue impact that should be passed through the Company's PCA mechanism. Idaho Power shall record the purchase cost paid to irrigators and any calculated lost revenue in separate purchased power subaccounts. The separate subaccount detail with all supporting documentation should be such that the costs for the Buy-Back Program and any lost revenue amounts will be easily identified for audit. The PCA filing should also include a separate line to identify these costs.

The Commission now must determine how Idaho Power will make payments to participating irrigation customers, an issue that was not resolved by the Commission's Interlocutory Order No. 28676. This issue is also the subject of the Petitions for Clarification filed on May 11, 2001, by Armand M. Eckert and Mike Larson ("Petitioners"), irrigators who are participating in this Program.

Idaho Power's RFP delineates how it proposes to make monthly payments to irrigators through this Program. In order to measure energy reductions upon which payments will be based the RFP states:

Energy reductions will be measured by comparing the average kWh consumption at each metered service point during the immediately preceding five years ("Base Energy Consumption Amount" or "BECA") with the amount of annual electric energy consumption that the Bidder actually consumed at the metered service points during the 2001 growing season. The difference between the Base Energy Consumption Amount and the actual amount of annual energy consumption during the 2001 growing season will be the amount of energy reduction to be compared to the OER [the amount of kWh an irrigator bid into the Program]("Actual Energy Consumption Amount").

RFP at pp. 5-6, § 3.4. The RFP also states that, "[t]he Bidder's Offered Energy Reduction will be converted into calendar month equivalents based on the proportionate share of each calendar month's contribution to the total Base Energy Consumption Amount." RFP at p. 6, § 3.6. The Company will then use this proportional monthly amount as the basis for payment for each month as the RFP explains:

The basis for the payment to Bidders will be the difference between the annual Base Consumption Amount and the annual Actual Energy Consumption Amount. Idaho Power will pay Bidder monthly for the portion of the Offered Energy Reduction actually provided during that month. For each month in which Bidder actually reduces its energy consumption from the monthly Base Energy Consumption Amount by at least 95% of the OER for the equivalent calendar month, Idaho Power will multiply the reduction amount by the accepted offer price and pay Bidder 75% of that amount. The remaining 25% balance will be retained by Idaho Power and paid to Bidder prior to November 30, 2001, after confirmation that the Bidder has delivered the full Offered Energy Reduction and has otherwise fully performed the Agreement between Idaho Power and the Bidder. Idaho Power will deduct from any payment to Bidder any balance owing to Idaho Power which is in arrears.

RFP at p. 9, § 4.2.

Based on the language in the RFP and the lack of direction on this issue from the Commission's Interlocutory Order the Petitioners seek clarification on how Idaho Power will calculate and make monthly payments to participating irrigation customers. After discussions with the Company, Petitioners allege that if they do not save 95% of the proportional monthly amount of their total Offered Energy Reduction for any given month they will not receive payment for that month until the Program's conclusion. Petitioners contend that they should receive monthly payments for any actual energy reduction provided for each month as stated in the second sentence of § 4.2 of the RFP. Accordingly, the Petitioners request that the Company pay participating customers 75% of the total amount owed for energy reductions "monthly for the portion of the Offered Energy Reduction actually provided during that month." RFP at § 4.2.

Next, Petitioners allege that if Idaho Power is allowed to withhold payments to irrigators who fail to save at least 95% of the proportional monthly amount the Company will refuse to pay any interest on these amounts which will be held until November. Accordingly, if the Company is allowed to proceed with its monthly payment methodology Petitioners request that the Commission require Idaho Power to pay interest on any balance not paid to a customer for failure to hit the 95% monthly energy reduction mark.

Idaho Power filed a response to these Petitions on May 16, 2001. First, the Company contends that as stated in the RFP, "as long as the customer reduces energy consumption by at least 95% of the *Offered Energy Reduction for the equivalent calendar month*, a payment will be made." The Company states that it devised this payment method recognizing that not all customers would

provide energy reductions on a uniform monthly basis. However, the Company specifically designed this payment methodology in this fashion to insure that participating customers provide their total Offered Energy Reduction and are not overpaid for failure to reach that mark. The Company also contends that interest should not be paid on amounts retained by it for failure of its customers to save 95% of the proportional monthly amount of the total Offered Energy Reduction as they have not complied with the RFP and it would not be consistent with Commission Order No. 28676.

Although the Company has stated that it will only make monthly payments to participating irrigation customers if the “bidder actually reduces its energy consumption from the monthly Base Energy Consumption Amount by at least 95% of the OER for the equivalent calendar month,” the previous sentence in § 4.2 of the RFP seems to propose a different method of making monthly payments. That is to pay each irrigator monthly for any actual energy consumption. These sentences are obviously inconsistent and could easily and have obviously created confusion among irrigators participating in this Program. Accordingly, the Commission must resolve this inconsistency. The Commission finds that despite the contradictory language in § 4.2 of the RFP the third sentence in that section, the more specific should control. Specifically, “[f]or each month in which Bidder actually reduces its energy consumption from the monthly Base Energy Consumption Amount by at least 95% of the OER for the equivalent calendar month, Idaho Power will multiply the reduction amount by the accepted offer price and pay Bidder 75% of that amount.” Therefore, Petitioners’ Petition is denied in part and Idaho Power shall be allowed to make or withhold payments to irrigators based on the method described in the third sentence of § 4.2 of the RFP. Because the Commission makes this finding it must also address whether any payments which the Company withholds to the end of the Program should accrue interest or be given other treatment.

Initially, Idaho Power did not address whether it would pay interest on payment amounts carried to the end of the Program as a result of a customer failing to save 95% of the proportional monthly amount of the total kWh bid into the Program. The Commission in Order No. 28676 required the Company to pay interest at a rate of 6% on the 25% of the monthly payments to be held back until the Program ends in November, but did not address whether the Company should pay interest on monthly payment amounts which are withheld for failure to save 95% of the proportional monthly amount. Petitioners request that the Commission require the Company to pay interest on the monthly payment amounts it withholds until the end of the Program. Idaho Power now contends

that it should not be required to pay interest on payments which it withholds until the end of the season for failure to meet the terms of the RFP.

Failure to save 95% of the proportional monthly amount of the total Offered Energy Reduction disqualifies a customer from receiving payment for that month and any amount that the Company owes to that customer will be carried until the end of the Program. Thus, instead of Idaho Power withholding only 25% of the monthly payment until the end of the Program for security, it will hold the entire monthly payment, if any. By withholding this entire payment the Company provides a strong incentive for the participating irrigation customer to meet their total Offered Energy Reduction. Therefore, to be consistent with the previous requirement in Interlocutory Order No. 28676 that the Company pay interest on the 25% hold back amount, the Commission now finds that Idaho Power shall pay interest at a rate of 6% on monthly payment amounts that are owed to participating irrigation customers, but withheld until the end of the Program because 95% of the proportional monthly amount of the total Offered Energy Reduction was not saved. In the alternative, the Company may apply these withheld payments as a credit against any balance that the irrigator owes the Company for irrigation service taken under Schedule 24. Accordingly, the Petitions for Clarification are granted in part.

The Commission again finds that the Company shall pay interest at a rate of 6% on the 25% of the monthly payments to be held back until the Program ends in November 2001. However, the Commission further finds that Idaho Power shall allow any participating irrigation customer to defer receipt of Program payments to 2002 and those that do shall not be eligible to receive interest.

The Commission approves the penalty for failure to supply at least 95% of the total offered energy reduction for the whole season by the bidder of an amount equal to 200% of the bid price. Penalties will be calculated at the end of this Program. The Commission also approves Idaho Power's proposal to pay irrigation customers who participate in the Program for energy reductions up to 105% of the offered energy reduction. The Commission finds that these mechanisms provide appropriate incentives and penalties to meet the goals of the Program. While we recognize that some customers view the penalties as too punitive we find that they are necessary and reasonably reflect the risk other classes of customers will bear if an irrigation customer does not deliver the kWh reduction in its contract.



The Commission further finds that Idaho Power shall allow irrigation customers taking irrigation service under Tariff Schedules 7 or 9 the opportunity to participate in this Program or others offered by Idaho Power for which they are eligible.

The Commission continues to find that it does not have jurisdiction to value water that may remain in the waterways as a result of this Program. Furthermore, because this Program is designed only to buy energy, any consideration of the value of water is outside the scope of the Commission's decision.

The Commission directs the Company to report to the Commission regarding the operation of the Program and its results in the coming months.

Finally, the Commission again recognizes the diligent and professional manner of Idaho Power Company and its customers during the consideration and implementation of this creative and promising Program. Without that assistance it would have been impossible for the Commission to render a decision in this case in such an expedited manner.

#### **1. Application for Intervenor Funding.**

On April 11, 2001, IIPA filed an Application for Intervenor Funding in this case pursuant to *Idaho Code* § 61-617A and Rule 162 of the Commission's Rules of Procedure, IDAPA 31.01.01.162.

In its Petition, the Irrigators claimed the following fees and costs:

Legal Fees (Randall C. Budge---64.9 hours @ \$150/hr.)	\$ 9,735.00
Costs:	\$ 618.64
Consulting Fees (Tony Yankel---66 hours @ \$100/hr.)	\$ 6,600.00
Costs:	<u>\$ 896.21</u>
Total	\$17,849.85

In support of its request for intervenor funding IIPA states that it has materially contributed to the decision in this case in the following manner:

- By recommending that irrigation customer be paid a higher price for kWh saved which it believes would provide a greater level of participation and provide larger savings to the Company and ratepayers. Application at 1-2.
- By arguing that the flat Mid-Columbia price utilized by Idaho Power's Program was too low to measure its impacts.

- By pointing out the relevant loss factor associated with delivering energy to irrigation customers of 11.79% which was not included in the Company's calculations
- By addressing the magnitude of the Company's discounts based upon allege, risks, weather uncertainties and free riders.
- By recommending that the Company be allowed to fully recover reduced actual marginal revenues associated with the program.
- By encouraging irrigation customers to attend and testify in support of the Program at public hearings in this case which resulted in the flat 15¢ per kWh price and allowing Schedule 7 or 9 irrigation customers to also participate in the Program.
- By spending substantial amounts of time prior to the filing of Idaho Power's Program working with the Company to develop and implement conservation programs for the irrigation class.

IIPA asserts that the expenses and costs incurred by the Irrigators are reasonable and were necessarily incurred.

IIPA alleges that the expenses and costs of participating in this case constitute a significant financial hardship for it. IIPA contends that it currently has less than \$20,000 in the bank and substantial accounts payable as a result of participation in several proceedings filed recently by Idaho Power and PacifiCorp. IIPA also states that it is a non-profit corporation that represents farm interests in electric utility rate matters affecting farmers in southern and central Idaho and relies solely upon dues and contributions voluntarily paid by members, together with intervenor funding to fund activities and participate in rate cases. However, IIPA alleges that member contributions have fallen because of the extremely depressed agricultural economy. Accordingly, IIPA states that it continues to be a financial hardship for it to fully participate in all rate matters affecting its members. As a result of financial constraints IIPA alleges that its participation in past cases has been selective and on a limited basis.

IIPA argues that the positions it took in these proceedings were different than those taken by the Company, Staff and other intervenors with regard to the purchase price.

Finally, IIPA contends that the position taken by it in this case addresses issues that concern the general body of users or consumers.

On April 4, 2001, Idaho Power filed a Response to IIPA's Application indicating that it has no objection to the grant of intervenor funding to this organization in this case. However, Idaho Power requests that the Commission allow it to include the costs of any award of intervenor funding to IIPA as an expense to be recovered in the Company's PCA proceeding.

We find that IIPA's Application in this case was timely filed and satisfies all of the other "procedural" requirements set forth in Rules 161-165 of the Commission's Rules of Procedure.

Rule 165 of the Commission's Rules of Procedure contains the following "substantive" requirements: (a) IIPA's involvement in this case must have materially contributed to the Commission's final decision, (b) the costs of intervention awarded are reasonable in amount, (c) the costs of intervention are a significant hardship for IIPA, (d) the recommendations of the IIPA differed materially from the testimony and exhibits of Commission Staff, and; (e) the IIPA addressed issues of concern to the general body of ratepayers.

We find that IIPA's involvement in this case, through its attorney, Randy Budge, materially contributed to our understanding of the issues addressed in this case and the decision finally reached. We find that while IIPA's involvement addressed issues primarily of concern to the irrigation customer class, that involvement also addressed issues of concern to the general body of ratepayers. We find that these costs and expenses would constitute a significant financial hardship for this organization if they were not recovered. We find that the application for intervenor funding of IIPA complies with the letter and spirit of *Idaho Code* § 61-617A. We therefore find it fair, just and reasonable to allow IIPA to recover its attorney fees and costs associated therefrom in the sum of \$10,453.64.

The Commission, however, finds that Mr. Tony Yankel's involvement on behalf of IIPA did not contribute a value in the amount of \$7,496.21. Mr. Yankel's efforts contributed slightly to the Commission's decision in this case. Accordingly, the Commission finds that IIPA shall be awarded only half of the amount of the consulting fees and costs requested, or \$3,748.11.

The Commission finds that Idaho Power shall include \$14,201.75 as an expense to be recovered in the Company's next PCA proceeding from the irrigation class.

## **2. Irrigator Petitions to be included in the Program**

After the Commission issued its Interlocutory Order on March 14, four irrigators filed requests to participate in the Program. These requests are described below.

### **a. Randy Hipwell**

Mr. Hipwell states that he did not submit a bid to participate in the Program because he was out of town when Idaho Power held its meetings with irrigators and thus did not have full knowledge of the requirements to participate in the Program. Mr. Hipwell now wishes to participate in the Program and has attached a bid with his Petition which offers Idaho Power the option of buying a projected 414,985 kWh from him at 15¢ per kWh.

**b. Paul Porter**

Mr. Porter states that although his power consumption is approximately 79,000 kWh for an irrigation season there is no compelling reason why he should not be included in this Program when the electric power supply is so tight. It is not clear from Mr. Porter's filing whether he submitted a bid to Idaho Power Company prior to February 28, 2001.

**c. Stuart Mininger**

Mr. Mininger states that he did not submit a bid for Idaho Power's Program because the original solicitation price of 12¢ per kWh would not work for his farming operation and because he believed that any bid he chose to submit over this level would be rejected. Furthermore, he states that it would have been difficult to wait until mid-March to be notified if his bid was accepted or rejected by the Company as he was arranging for financing at this time. However, now that the maximum price has been raised, Mr. Mininger believes that he could save approximately 287,485 kWh at a price of 15¢ per kWh. Accordingly, he is requesting the Commission order Idaho Power to accept his bid to participate in this Program.

**d. Double Eagle, Inc.**

Double Eagle, Inc. states that it submitted timely offers to Idaho Power to reduce its electrical energy consumption. *See* Attachment to Petition. On March 19, 2001, Idaho Power denied the offers submitted by Double Eagle, Inc. on the grounds "there has been no energy consumption at the metered service points associated with this offer during the previous five years. As a result, your offer does not meet the criteria necessary for acceptance in Idaho Power Company's Irrigation Buy Back Program." *See* Exhibit D attached to Petition.

Double Eagle asserts that its offers complied with all requirements of the Interlocutory Order. Furthermore, Double Eagle contends that its offers complied with all provisions of Idaho Power's Request for Proposal, with the exception that it did not have any historical average kWh consumption for the previous five years as required by Idaho Power. Double Eagle states that the acreage in its bid was in the CRP program from 1991 through year 2000, and therefore did not have

a metered service point during the preceding five years. However, the subject property was irrigated for several years prior to 1991 and that the average electrical consumption on the property during that time was 2,028,880 kWh per year. Moreover, Double Eagle asserts that it fully intended to farm this property during the 2001 crop year as was evidenced by its down payments on irrigation equipment. Accordingly, Double Eagle requests that the Commission clarify that Interlocutory Order No. 28676 requires Idaho Power to accept Double Eagle's bid to participate in this Program.

Although the Commission is sympathetic to the circumstances of these and similarly situated customers, it cannot change the Program parameters at this late date to allow them to participate. The Commission is a creature of statute with limited powers. *McGuire Estates Water Company v. Idaho Public Utilities Commission*, 111 Idaho 341, 342, 723 P.2d 885 (1986); *Idaho Code* § 61-201. *Idaho Code* § 61-315 expressly prohibits public utilities from discriminating against or granting preferences to any corporation or person with regard "to rates, charges, service, facilities or in any other respect." It is the Commission's duty to make sure that this statute is followed.

**e. Commission Decision**

In the present case, the Petitioners each ask to be allowed to participate in Idaho Power's Program despite not having met the requirements for participation in the Program as set by the Company and approved by the Commission in previous Orders in this case. The Commission finds that granting these Petitions would violate the discrimination prohibitions outlined by *Idaho Code* § 61-315. Accordingly, they must be denied. In the alternative the Commission finds that the Petitioners' have not presented circumstances that justify acceptance of their offers to participate in Idaho Power's Program. Therefore, on these two bases the Commission denies all four Petitions.

**ORDER**

IT IS HEREBY ORDERED that the Industrial Customers of Idaho Power's request for the disclosure of Idaho Power's "confidential report" filed with the Commission is denied as moot.

IT IS FURTHER ORDERED that the request of the Industrial Customers of Idaho Power to delay Commission decision on Idaho Power's Application is denied as moot.

IT IS FURTHER ORDERED that Astaris LLC's request to combine this case with Case Nos. IPC-E-01-4 and IPC-E-01-7 is denied as moot.

IT IS FURTHER ORDERED that Idaho Power's Request for Authority to Accept Bids is approved and the Company shall implement its Irrigation Buy-Back Program as outlined in this Order.

IT IS FURTHER ORDERED that Idaho Power's Irrigation Buy-Back Program is a temporary voluntary program only for 2001.

IT IS FURTHER ORDERED that 15¢ per kWh is a reasonable payment amount for energy purchased under this Program.

IT IS FURTHER ORDERED that Idaho Power shall allow any irrigation customer with a bid that was accepted at a price below 15¢ per kWh to receive 15¢ per kWh.

IT IS FURTHER ORDERED that eligible customers who submitted bids over the 15¢ per kWh level and were not accepted are allowed to participate in the Program at the 15¢ per kWh price.

IT IS FURTHER ORDERED that Idaho Power shall allow irrigation customers who take irrigation service under Tariff Schedules 7 or 9 the opportunity to participate in this Program or other conservation programs offered by Idaho Power for which they are eligible.

IT IS FURTHER ORDERED that the direct costs and lost revenue impacts of this Program may be treated as a purchased power expense in the Power Cost Adjustment. The Commission also finds that Idaho Power and the parties shall develop and present a proposal to the Commission recommending a procedure to calculate the appropriate amount of lost revenues that should be passed through the Company's Power Cost Adjustment mechanism prior to actual recovery in rates.

IT IS FURTHER ORDERED that Idaho Power record the purchase cost paid to irrigators and any calculated lost revenue in separate Purchased Power subaccounts. The separate subaccount detail with all supporting documentation should be such that the costs for the buy-back program and any lost revenue amounts will be easily identified for audit. The PCA filing should also include a separate line to identify these costs.

IT IS FURTHER ORDERED that payment amounts for participating customers will be the difference between the Base Energy Consumption Amount and the actual reduction during the 2001 irrigation season. For each month the bidder actually reduces energy consumption from the monthly Base Energy Consumption Amount by at least 95% of the offered energy reduction for the equivalent calendar month, the Company will multiply the reduction by the accepted bid price and pay the irrigation customer 75% of that amount for that month. The remaining 25% balance will be retained by Idaho Power and paid to the irrigation customer prior to November 30, 2001 after the Company has confirmed that the full offered energy reduction has been delivered and the bidder has

otherwise fully performed its agreement with Idaho Power. Therefore, the Petitions for Clarification are denied in part.

IT IS FURTHER ORDERED that in months that a participating customer does not qualify for payment because of failure to achieve 95% of the proportional monthly amount of the total Offered Energy Reduction the Company shall either pay interest on these amounts at a rate of 6% at the conclusion of this Program or shall apply each months amount as a credit against any current bill for irrigation service taken under Schedule 24. Therefore, the Petitions for Clarification are granted in part.

IT IS FURTHER ORDERED that the Company shall pay interest at a rate of 6% on the 25% of the monthly payments to be held back until the Program ends in November 2001.

IT IS FURTHER ORDERED that Idaho Power shall allow irrigation customers to defer payments they are entitled to from the Company until 2002, but any participant choosing this option will not be allowed to collect interest from the Company as a result of these deferred payments.

IT IS FURTHER ORDERED that the penalty for failure to supply at least 95% of the total offered energy reduction for the whole irrigation season by the bidder shall be an amount equal to 200% of 15 cents per kWh. Penalties will only be assessed at the end of the Program.

IT IS FURTHER ORDERED that Idaho Power's proposal to pay participating irrigation customers for energy reductions in an amount up to 105% of the offered energy reduction is approved.

IT IS FURTHER ORDERED that the four Petitions requesting the Commission order Idaho Power to allow them to participate in this Program are denied.

IT IS FURTHER ORDERED that the Industrial Customers of Idaho Power's request that Idaho Power determine and disclose what type of crops that will not be grown this season is denied.

IT IS FURTHER ORDERED that Idaho Power Company shall report to the Commission regarding the operation of the Program and its results in the coming months.

IT IS FURTHER ORDERED that the Idaho Irrigation Pumpers Association is awarded intervenor funding to be paid by Idaho Power in the following amounts. The Commission awards \$10,453.54 to IIPA for attorney fees and costs and \$3,748.11 for consulting fees and costs for a total of \$14,201.65.

IT IS FURTHER ORDERED that Idaho Power shall include the costs of this award of intervenor funding to IIPA as an expense to be recovered in the Company's next PCA Proceeding

from the irrigation class.

THIS IS A FINAL ORDER. Any person interested in this Order or the Interlocutory Order previously issued in this Case No. IPC-E-01-3 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this Case No. IPC-E-01-3. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code § 61-626.*



DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this  
day of May 2001.

PAUL KJELLANDER, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Jean D. Jewell  
Commission Secretary

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